Kausalya a/p M Pathmanathan & Anor v The Legal Representatives of Jamuna a/p Narayanan, deceased & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCVC)(W)-1408–06 OF 2012

MOHD HISHAMUDIN, ABDUL AZIZ ABD RAHIM AND MOHAMAD ARIFF JJCA

6 FEBRUARY 2014

Succession — Letters of administration — List of beneficiaries — Application by plaintiffs to be included as beneficiaries of estate of deceased — Validity of marriage between plaintiffs' mother and deceased — Whether marriage conducted in conformity with Hindu law — Whether Hindu law recognises polygamous marriages — Whether presumption in favour of valid marriage had been triggered — Whether presumption rebutted — Whether plaintiffs were legitimate children — Whether plaintiffs entitled to be included in list of beneficiaries

When M Pathmanathan ('the deceased') died intestate, his wife ('the first defendant') and his son ('the second defendant') applied for letter of administration ('LA') and were named as administrators and beneficiaries of the estate of the deceased in the LA. The plaintiffs, who claimed to the lawful children of the deceased, attempted to be included in the list of beneficiaries to the estate of the deceased. When their attempts proved fruitless, they filed a suit in the High Court for an order to have their names included in the List of Beneficiaries and for an order that the defendants disclose the value of all the assets of the estate of the deceased. It was the plaintiffs' case, that while the deceased was married to the first defendant, he had on 20 December 1975 contracted a valid marriage with their mother ('PW2'), and that the plaintiffs together with the deceased and PW2 had lived together as a family until he was transferred to Penang. The defendants challenged the legitimacy of the plaintiffs on the basis that the marriage of PW2 with the deceased was void. It was the defendants' contention that the marriage was void under Hindu law because Hindu law only recognised monogamous marriages. The plaintiffs relied on the report of the Royal Commission on non-Muslim Marriage and Divorce Laws dated 15 November 1971 ('the report') and argued that Hindu law recognised polygamy and that the marriage between the deceased and PW2 was valid. The trial judge took the view that there was no valid marriage contracted between the deceased and PW2 on the basis that Hindu law did not recognise polygamous marriages. The trial judge also found that the plaintiffs had failed to adduce sufficient evidence to establish a valid marriage between

A the deceased and PW2. The High Court judge thus dismissed the plaintiffs' claim with costs. This was the plaintiffs' appeal against that decision.

Held, allowing the appeal with costs:

B (1) The trial judge arrived at the finding that Hindu law did not recognise polygamous marriages without any legal basis. The trial judge had not referred to any authority to support this view, besides referring to portions of the report, which were unclear as to the legal status of polygamous marriages under Hindu law. However, in cases decided by
C the Indian Supreme Court it was succinctly stated that polygamous marriages were recognised by ancient Hindu law, though allowed in a restricted sense. Further, these cases held that children born out of a polygamous marriage were not illegitimate and had equal rights with children conceived from a first marriage in matters relating to
D inheritance. Guided by the decision in these cases it was clear that the same position would also apply in Malaysia with regards to polygamous marriages in Hindu society. At the same time, a qualification would need to be added that polygamous marriages based on Hindu law would only apply if solemnised prior to the Law Reform (Marriage and Divorce) Act
E 1975, and not thereafter (see paras 25–29).

(2) It is trite law that in proving a valid marriage, the plaintiff's merely had the burden of proving that there was a marriage ceremony, followed by cohabitation, before a presumption in favour of a valid marriage would
F be triggered. In the present case, PW2's testimony that she and the deceased were married at the Hindu temple in Kelantan was not challenged in cross-examination by the defendants. As s 4(2) of the Act deems such a marriage to be registered under the Act, there was no requirement in law that the plaintiffs had to adduce a marriage certificate to corroborate the evidence of a marriage ceremony or call independent
G witnesses who were present at the wedding to testify in court. Further, PW2's evidence had sufficiently established that she and the deceased had cohabited as husband and wife after their marriage. Therefore the presumption in favour of a valid marriage was triggered and the marriage between the deceased and PW2 was a valid marriage. The defendants had
H failed to rebut the presumption (see paras 32–36).

(3) Since the deceased and PW2 had contracted a valid marriage, the plaintiffs as the legitimate children of the deceased were entitled to be included in the list of beneficiaries to the estate of the deceased (see paras
I 37–38).

[Bahasa Malaysia summary

Apabila M Pathmanathan ('si mati') meninggal dunia tanpa wasiat, isterinya ('defendan pertama') dan anak lelakinya ('defendan kedua') telah memohon

surat pentadbiran ('SP') dan dinamakan sebagai pentadbir-pentadbir dan benefisiari-benefisiari harta pusaka si mati dalam SP itu. Plaintif-plaintif, yang mendakwa anak-anak sah si mati, telah cuba untuk dimasukkan dalam senarai benefisiari-benefisiari kepada harta pusaka si mati. Apabila percubaan mereka gagal, mereka telah memfailkan guaman di Mahkamah Tinggi untuk perintah agar nama-nama mereka dimasukkan dalam Senarai Benefisiari-Benefisiari dan untuk perintah agar defendan-defendan menyatakan nilai semua aset-aset harta pusaka si mati. Adalah kes plaintif-plaintif, bahawa semasa si mati berkahwin dengan defendan pertama, dia telah mengikat kontrak pada 20 Disember 1975 satu perkahwinan sah dengan ibu mereka ('PW2'), dan bahawa plaintif-plaintif bersama si mati dan PW2 telah tinggal bersama sebagai satu keluarga sehingga dia berpindah ke Pulau Pinang. Defendan-defendan mencabar kesahan plaintif-plaintif atas dasar bahawa perkahwinan PW2 dengan si mati adalah tidak sah. Adalah hujah defendan-defendan bahawa perkahwinan itu tidak sah di bawah undang-undang Hindu kerana undang-undang Hindu hanya mengiktiraf perkahwinan monogami. Plaintif-plaintif bergantung kepada laporan Suruhanjaya DiRaja berhubung Undang-Undang Perkahwinan dan Perceraian Orang bukan Islam bertarikh 15 November 1971 ('laporan tersebut') dan berhujah bahawa undang-undang Hindu mengiktiraf poligami dan bahawa perkahwinan antara si mati dan PW2 adalah sah. Hakim perbicaraan berpendapat bahawa tiada perkahwinan sah berlaku antara si mati dan PW2 berdasarkan undang-undang Hindu yang tidak mengiktiraf perkahwinan poligami. Hakim perbicaraan mendapati bahawa plaintif-plaintif telah gagal untuk mengemukakan keterangan untuk membuktikan terdapat perkahwinan sah antara si mati dan PW2. Hakim Mahkamah Tinggi dengan itu menolak tuntutan plaintif-plaintif dengan kos. Ini adalah rayuan plaintif-plaintif terhadap keputusan tersebut.

Diputuskan, membenarkan rayuan dengan kos:

(1) Hakim perbicaraaan mendapati penemuan bahawa undang-undang Hindu tidak mengiktiraf perkahwinan poligami tanpa apa-apa asas sah. Hakim perbicaraan tidak merujuk kepada mana-mana autoriti untuk menyokong pendapat ini, selain daripada merujuk kepada sebahagian daripada laporan tersebut, yang tidak jelas berhubung status sah perkahwinan poligami di bawah undang-undang Hindu. Walau bagaimanapun, dalam kes-kes yang diputuskan oleh Mahkamah Agung India ia dinyatakan secara ringkas bahawa perkahwinan poligami diiktiraf oleh undang-undang Hindu lama, meskipun dibenarkan dalam erti kata yang terhad. Selanjutnya, kes-kes tersebut memutuskan bahawa anak-anak yang dilahirkan di luar perkahwinan poligami bukan tidak sah taraf dan mempunyai hak-hak sama dengan anak-anak yang dilahirkan daripada perkahwinan pertama dalam perkara-perkara berkaitan pewarisan harta. Berpandukan keputusan kes-kes tersebut adalah jelas

bahawa kedudukan sama juga terpakai di Malaysia berkenaan perkahwinan poligami dalam masyarakat Hindu. Pada masa sama, satu syarat perlu ditambah bahawa perkahwinan poligami berdasarkan undang-undang Hindu hanya terpakai jika dilangsungkan sebelum Akta Undang-Undang Pembaharuan (Perkahwinan dan Percaraian) 1975, dan bukan selepas itu (lihat perenggan 25–29).

(2) Adalah undang-undang yang tidak dipertikaikan bahawa dalam membuktikan satu perkahwinan sah, plaintif hanya mempunyai beban membuktikan bahawa terdapat upacara perkahwinan, diikuti dengan bersekedudukan, sebelum satu anggapan menyokong suatu perkahwinan sah boleh dibuat. Dalam kes ini, testimoni PW2 bahawa dia dan si mati telah berkahwin di kuil Hindu di Kelantan tidak dicabar dalam pemeriksaan balas oleh defendan-defendan. Oleh kerana s 4(2) Akta tersebut menganggap perkahwinan sedemikian perlu didaftarkan di bawah Akta tersebut, tiada keperluan dari segi undang-undang bahawa plaintif-plaintif hendaklah mengemukakan sijil perkahwinan untuk menyokong bukti majlis perkahwinan atau memanggil saksi-saksi bebas yang hadir semasa perkahwinan itu untuk memberi keterangan di mahkamah. Selanjutnya, keterangan PW2 telah cukup untuk membuktikan bahawa dia dan si mati telah bersekedudukan sebagai suami dan isteri selepas perkahwinan mereka. Oleh itu andaian menyokong perkahwinan sah wujud dan perkahwinan antara si mati dan PW2 adalah perkahwinan yang sah. Defendan-defendan telah gagal untuk mematahkan andaian tersebut (lihat perenggan 32–36).

(3) Oleh kerana si mati dan PW2 memasuki perkahwinan sah, plaintif-plaintif sebagai anak-anak sah si mati berhak dimasukkan dalam senarai benefisiari-benefisiari kepada harta pusaka si mati (lihat perenggan 37–38).]

Cases referred to

Mahadervan v Mahadervan [1962] 3 All ER 1108 (folld)

Smt Nimmo Devi and Anor v Smt Manni Devi and Ors (2004) 137 PLR 385, HC (folld)

Smt Parayankandiyal Eravath Kanapravan Kalliani Amma and Others v K Devi and Others AIR 1996 SC 1963, SC (folld)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 s 4(2)

Appeal from: Civil Suit No 22-NCVC-1084–11 of 2011 (High Court, Kuala Lumpur)

Ang Hean Leng (SA Ponmugam with him) (Ponmugam & Co) for the appellants.
Ashrin Kulasingam (K Mano & Associates) for the respondent.

Mohd Hishamudin Yunus JCA (delivering judgment of the court):

[1] The appeal before us emanates from the High Court of Kuala Lumpur, namely, Kuala Lumpur High Court Civil Suit No 22-NCVC-1084–11 of 2011.

[2] The appeal is by the plaintiffs against the decision of the learned High Court Judge dated 18 May 2012 dismissing the plaintiffs' claim with costs.

[3] The plaintiffs' claim in the High Court was essentially for, among others, an order that the defendants include the plaintiffs' names in the list of beneficiaries attached to the letters of administration taken out in favour of the estate of M Pathmanathan, deceased (the deceased), and to disclose the total value of the estate of the deceased.

[4] On 26 June 2013 we allowed the plaintiffs' appeal with costs and set aside the decision of the High Court.

[5] Our decision is unanimous.

[6] We now give our grounds for allowing the appeal.

[7] We will begin by setting out briefly the facts of the case.

[8] The plaintiffs' are sisters and claim to be the legitimate children of the deceased. They contend that while the deceased was married to the first defendant, Jamuna a/p Narayanan, the deceased married their mother, Sampurnam a/p Panandam (PW2) and took PW2 as his second wife. The marriage of the deceased and their mother (PW2) was allegedly solemnised on 20 December 1975 at the Thiru Murugan Alayam Temple in Kuala Krai, Kelantan. Thereafter, both the plaintiffs and their parents (meaning the deceased and PW2) lived together as a family. Subsequently, however, the deceased was transferred to Penang. On being so transferred, he went back to live with the first defendant and their children until his death.

[9] The deceased died intestate on 15 December 2002 and letters of administration for his estate was taken out on 30 October 2003. Both the first defendant, being the wife of the deceased and the second defendant, being the son of the deceased with the first defendant, were named as administrators and beneficiaries of the estate of the deceased in the letters of administration. There was no mention of PW2 and the plaintiffs in the letters of administration.

[10] Sometime in 2010, the plaintiffs discovered that they were not included as beneficiaries to the estate of the deceased. They claim that they are the lawful children of the deceased, and as such should have been named as beneficiaries. They made attempts, through their solicitors, to contact the defendants, so that they would be included in the list of beneficiaries to the estate of the deceased. However, they alleged that the defendants never reciprocated.

[11] They, therefore, filed a suit in the High Court seeking for an order that their names to be included in the list of beneficiaries; and also for an order that the defendants disclose the value of all the assets of the estate of the deceased.

[12] The first defendant denies that the deceased was ever married to PW2 or that the plaintiffs are the children of the deceased. She claim that she was the only wife of the deceased. As such, she refutes the claim of PW2 as being the deceased's second wife. She testified that she had never communicated with PW2 during the lifetime of her husband, the deceased.

[13] It is to be noted that the second defendant was not duly served with the writ and statement of claim at the time of trial, as the second defendant was residing in Australia and could not be contacted although reasonable opportunity had been accorded to the plaintiffs to serve the writ and statement of claim outside jurisdiction. There was an application for adjournment made by learned counsel for the plaintiffs on the day of the trial, until such time that service of the writ and statement of claim could be effected on the second defendant, but this was refused by the learned High Court judge. As such, the learned judge proceeded with the trial against the first defendant only. In essence, this appeal is only against the first defendant. We, however, note that there is no cross-appeal by the defendants against the decision of the learned High Court judge in proceeding with the trial in the absence of the second defendant.

[14] Before us, it has been argued by learned counsel for the first defendant that there was never a marriage between the deceased and PW2, and, even assuming that they were married, the marriage was void under Hindu law, as Hindu law only recognises monogamous marriages. As such, learned counsel contended that since the deceased was married to the first defendant, the deceased was prohibited under Hindu law to take PW2 as his second wife. Even if they were married, their marriage was void. He concluded his argument by contending that since the marriage was void, the plaintiffs were not the legitimate children of the deceased and thus were not entitled to the estate of the deceased.

[15] Learned counsel for the plaintiffs argued that Hindu law recognises polygamy, and on that basis, the marriage between the deceased and PW2 was valid. A

[16] The main issue before us is on the challenge of the validity of the marriage of the deceased with the PW2, being a polygamous marriage. This issue is actually two-fold. We have first to determine whether Hindu law recognises polygamous marriages; and second, whether the deceased and PW2 went through a marriage in accordance with Hindu custom. If the first question is answered in the negative, we do not have to answer the second question. B C

[17] It is not disputed that the deceased and PW2 were Hindus.

[18] It is common ground that in order to prove the validity of the marriage, the plaintiffs bear the burden of proving that the marriage of the deceased and PW2 was conducted in conformity with Hindu law. D

[19] It is to be noted that the alleged marriage took place in 1975. Therefore, this alleged marriage was solemnised prior to the enactment of the Law Reform (Marriage and Divorce) Act 1976 (Act 164) ('the Act'), which made polygamous marriages solemnised after 1 March 1982 void. Prior to the coming into force of the Act, the validity of a marriage was determined based on the personal laws of the parties to the marriage. That being the case, since both the deceased and PW2 professed the Hindu religion, therefore Hindu law would apply in determining whether their marriage was valid or otherwise. E F

[20] We shall now deal with the issue: whether Hindu law recognises polygamous marriages. G

[21] The learned High Court judge took the view that there was no valid marriage between the deceased and PW2 on the basis that Hindu law does not recognise polygamous marriages. The relevant portion of her grounds of judgment (at pp 11–12), is reproduced below and it reads as follows: H

> The plaintiffs' counsel submitted based on report on the Royal Commission on non-Muslim Marriage and Divorce laws dated 15 November 1971. I cannot see how this can be authority for the case at hand. It is a report based on the representations, commentaries from the various parties and recommendations of the Commissions on the state of the existing law at that point of time, it is never the law nor an authority to be used as a foundation to state that Hindu marriages are polygamous. Hence the reliance of the plaintiffs' counsel on the report is misplaced. I

[22] Even if one is to rely on the report, at p 12 of the plaintiffs' bundle of authority, it is stated as follows:

> The Commission however has noted that although it is thought that Hindu husband can marry any number of wives even during the lifetime of one or more wives, monogamy is recommended by the sacred texts …

[23] Further at p 13 of the same report it is stated that:

> It is further noted that the trend of legislation in India has been finally to bring about the Hindu Marriage Act 1955 which has not only abrogated pure Hindu Law but provides that no marriage may be solemnized after the coming into force of the Act between any two Hindus if one of them has a spouse living at the time of the marriage …

[24] Hence, the plaintiffs' counsel submission that in Hindu law, there is recognition of second marriages amongst Hindus, is rather misconceived. In Hindu law second marriages are not recognised. In fact marriages are regarded as monogamous. Polygamy is never the norm even in ancient Hindu society.

[25] With due respect, we are unable to agree with the learned High Court judge. We find that the learned High Court judge arrived at such a finding without any legal basis. She does not refer to any authority to support her view that Hindu law does not recognise polygamous marriage. She merely refers to two pages of the Report on the Royal Commission on non-Muslim Marriage and Divorce Law dated 15 November 1971. Even in doing so, with respect, she was unable to show where in the report it is clearly stated that a Hindu marriage is monogamous in nature, or that polygamous marriages are prohibited.

[26] Whilst we note that the portions of the Report of the Royal Commission quoted by the learned judge are unclear as to the legal status of polygamous marriages under Hindu law, with respect to the learned High Court judge, we cannot agree with her opinion that Hindu law only recognises monogamous marriages. On the contrary, we find that polygamous marriage is recognised under ancient Hindu law. In this aspect, we are guided by the Indian Supreme Court decision of *Smt Parayankandiyal Eravath Kanapravan Kalliani Amma and Others v K Devi and Others* AIR 1996 SC 1963, where the court in deciding the validity of a second marriage contracted by a Hindu during the subsistence of the first marriage, referred extensively to several ancient Hindu law texts and concluded that, though monogamy prevailed in Hindu society, polygamy was allowed under Hindu law, but was discouraged by society. S Saghir Ahmad J held (at p 1967 of the judgment):

> The passage clearly implies monogamy to be essential condition of the supreme law of conjugal duties. But it should be observed that the sages did not prohibit polygamy which was prevalent at the time but the tendency of their legislation was to discourage that practice by investing the first marriage with a religious character, and by permitting the marriage for religious purposes of a second wife in the lifetime of the first, only in certain contingencies when there was a failure of the object of the marriage.
>
> 18 From the above, it would be seen that though polygamy was not permitted, a second marriage was allowed in a restricted sense, and that too, under stringent circumstances, as for example, when there was a total failure of the object of marriage. Monogamy was the Rule and Ethos of the Hindu Society which derided a second marriage and rejected it altogether. The touch of religion in all marriages did not allow polygamy to become part of Hindu culture. This was the effort of community. Otherwise, this Court in *Bhaurao v State of Maharashtra* AIR 1965 SC 1564 (para 4) observed:
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> > Apart from these considerations, there is nothing in the Hindu Law, as applicable to marriages till the enactment of the Hindu Marriage Act, 1955, which made a second marriage of a male Hindu, during the lifetime of his previous wife, void.
>
> 19 Therefore, if a second marriage did take place, children born of such a marriage, provided it was not otherwise invalid, were not illegitimate and in the matter of inheritance, they had equal rights.

[27] The Supreme Court of India in the above mentioned decision had succinctly stated that polygamy marriages were recognised by ancient Hindu law, though allowed in a restricted sense. Further, it held that children born out of a polygamous marriage were not illegitimate and had equal rights with children conceived from a first marriage in matters relating to inheritance.

[28] Another Indian case which is often referred to as authority to state that Hindu law recognise polygamous marriages is the Punjab-Haryana High Court decision of *Smt Nimmo Devi and Anor v Smt Manni Devi and Ors* [2004] 137 PLR 385, in which KC Gupta J held:

> 19 The main plea of Munshi Ram was that Mota Ram was earlier married to Sardara Devi and during subsistence of the first marriage, Mota Ram was not legally entitled to contract second marriage with Manni Devi. If at all, he had contracted the second marriage during the subsistence of his first marriage, then the same as illegal and void. It is in evidence of Manni Devi that she was aged about 15 years at the time of marriage. Thus, her marriage with Mota Ram had taken place about 60 years ago ie in the year 1937, meaning thereby that the said marriage had taken place before enforcement of the Hindu Marriage Act, in 1955. Prior to the enforcement of the Hindu Marriage Act, there was no bar for a male Hindu to contract more than one marriage. Thus, performing a second marriage by Mota Ram with Manni Devi during the subsistence of his first marriage was not illegal or void.

[29] We find that the same position must also apply in Malaysia with regards to polygamous marriages in Hindu society. Of course, we say this with a qualification, as polygamous marriages based on Hindu law would only apply if solemnised prior to the Law Reform (Marriage and Divorce) Act 1975, and not thereafter. Section 4 of the Act is clear on this and it reads:

> Subsisting valid marriages deemed to be registered under this Act and dissoluble only under this Act
>
> 4(1) Nothing in this Act shall affect the validity of any marriage solemnized under any law, religion, custom or usage prior to the appointed date.
>
> (2) Such marriage, if valid under the law, religion, custom or usage under which it was solemnized, shall be deemed to be registered under this Act.

[30] We now come to the second issue, which is whether the deceased and PW2 were married. The defendants' counsel had submitted before us that the deceased and PW2 were never married. In this respect, the learned High Court judge held that the plaintiffs failed to adduce sufficient evidence to establish a valid marriage between the deceased and their mother. The learned High Court judge was of the view that, except for PW2's testimony, there were no independent witnesses called to corroborate PW2's evidence. The learned judge also held in her judgment that no marriage certificate or any documentary evidence was adduced to support the finding of a marriage between the deceased and PW2.

[31] Again, with due respect, we are unable to agree with the learned High Court judge. The learned High Court judge had placed undue importance on the fact that PW2 failed to produce a marriage certificate or any other documentary proof that the marriage was performed at the temple. Whilst the learned judge acknowledges that there was evidence that a marriage ceremony took place in the temple, the evidence was not corroborated. This is what the learned judge stated at p 9 of her judgment:

> There was in evidence by the PW2 that there was a wedding ceremony, however there is no independent evidence to support her contention. There was not a single witness called by the Plaintiff to support the evidence of PW2 that the marriage ceremony did take place.

[32] It is trite law that in proving a valid marriage, the plaintiff merely has the burden of proving that there was a marriage ceremony, followed by cohabitation, before a presumption in favour of a valid marriage would be triggered. In this respect, we wish to quote Sir Jocelyn Simon P in the case of *Mahadervan v Mahadervan* [1962] 3 All ER 1108 (at p 1117 of the judgment), where His Lordship held that:

> If it is not presumptuous to say so, it seems to me that 'decisive' might be said to beg the question: what is the weight of evidence which is required to decide the issue? In my view, where a ceremony of marriage is proved, followed by cohabitation as man and wife, a presumption is raised which cannot be rebutted by evidence which merely goes to show on a balance of probabilities that there was no valid marriage: it must be evidence which satisfies beyond reasonable doubt that there was no valid marriage. In other words, the presumption in favour of marriage in such circumstances is of the same weight as the presumption of innocence in criminal and matrimonial causes. A jury would have to be directed that to displace the presumption, the husband must prove his case in such a way that they can feel sure that there was no marriage.

[33] Coming back to the present case, PW2 in her evidence had testified that she and the deceased were married at the Hindu temple in Kuala Krai, Kelantan. The defendants did not challenge this in cross-examination. As such, the evidence is deemed admitted by the defendants.

[34] We also see no reason why the evidence needs to be corroborated. We find PW2 to be a credible witness as her evidence was consistent throughout the trial. There is no requirement in law that the plaintiffs have to adduce a marriage certificate to corroborate the evidence of a marriage ceremony, or that independent witnesses who were present at the wedding should be called to testify in court. On the contrary, as we have pointed out earlier in this judgment, s 4(2) of the Law Reform (Marriage and Divorce) Act 1976 deems such marriage to be registered under the Act.

[35] We further find that PW2's evidence has sufficiently established that the deceased and PW2 cohabitated together after the marriage. When asked under cross-examination on the issue of cohabitation, PW2 answered (at p 38 of the notes of evidence):

> KMN: Did you after your purported marriage, did you live with the deceased Mr Pathmanathan?
>
> Purnam: Yes, sir. I lived in Kluang four to five years. I lived in Johor Bahru with him for a few years. After that he was transferred to Penang. So he was staying with his first wife.

[36] This evidence clearly shows that the deceased and PW2 were cohabitating as husband and wife after their marriage. This evidence remained unchallenged by the defendants. Not an iota of evidence was forthcoming from the defendants to say otherwise.

[37] We find that based on PW2's evidence, it has been proven that there was a marriage ceremony followed by cohabitation between the deceased and PW2.

Therefore, the presumption in favour of a valid marriage as held in *Mahardevan*'s case is triggered, which in essence means that the marriage between the deceased and PW2 was a valid marriage. The defendants have failed to rebut this presumption.

[38] We now turn to the plaintiffs' substantive claim, which is that their names should be included in the list of beneficiaries by virtue of them being the legitimate children of the deceased. Learned counsel for the defendants challenged the legitimacy of the plaintiffs on the basis that the marriage of PW2 with the deceased was void. In view of our reasoning and decision above, this argument can no longer stand.

[39] For the above reasons, we hold that the deceased and PW2's marriage is valid, and that the plaintiffs, being the offspring from the said marriage, are legitimate children and beneficiaries of the estate of the deceased.

[40] We therefore allowed the appeal in terms of prayers 12 (a), (b), (c) and (d) of the statement of claim with costs to be borne by the estate of the deceased.

[41] Appeal is allowed with costs.

Appeal allowed with costs.

Reported by Kohila Nesan